

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

James J. Pisanelli, Bar No. 4027
Debra L. Spinelli, Bar No. 9695
M. Magali Mercera, Bar No. 11742
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101
Email: jjp@pisanellibice.com
Email: dls@pisanellibice.com
Email: mmm@pisanellibice.com

Jonathan D. Polkes (admitted pro hac vice)
Stephen A. Radin (admitted pro hac vice)
Caroline Hickey Zalka (admitted pro hac vice)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: 212.310.8770
Facsimile: 212.310.8007
Email: jonathan.polkes@weil.com
Email: stephen.radin@weil.com
Email: caroline.zalka@weil.com

Attorneys for Defendants Georges Antoun,
Kevin DeNuccio, Sarita James, Jay Leupp,
Merrick D. Okamoto, Said Ouissal, Simeon
Salzman, and Fred Thiel, and Nominal Defendant
Marathon Digital Holdings, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KIMBERLY BERNARD, Derivatively on
Behalf of MARATHON DIGITAL
HOLDINGS, INC. (f/k/a MARATHON
PATENT GROUP, INC.),

Plaintiff,

v.

FRED THIEL, GEORGES ANTOUN, KEVIN
DENUCCIO, SARITA JAMES, JAY LEUPP,
SAID OUISSAL, MERRICK D. OKAMOTO,
and SIMEON SALZMAN,

Defendants,

-and-

MARATHON DIGITAL HOLDINGS, INC.
(f/k/a MARATHON PATENT GROUP, INC.),

Nominal
Defendant.

Case No.: 2:22-cv-00305-RFB-NJK

**STIPULATION AND [PROPOSED]
ORDER RESOLVING PENDING
MOTIONS AND SETTING SCHEDULE
FOR FILING CONSOLIDATED
COMPLAINT AND MOTIONS TO
DISMISS CONSOLIDATED
COMPLAINT**

(First Request)

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

ROY STRASSMAN, Derivatively on Behalf of
MARATHON DIGITAL HOLDINGS, INC.
(f/k/a MARATHON PATENT GROUP, INC.),

Plaintiff,

v.

FRED THIEL, GEORGES ANTOUN, KEVIN
DENUCCIO, SARITA JAMES, JAY LEUPP,
SAID OUISSAL, MERRICK D. OKAMOTO,
and SIMEON SALZMAN,

Defendants,

-and-

MARATHON DIGITAL HOLDINGS, INC.
(f/k/a MARATHON PATENT GROUP, INC.),

Nominal
Defendant.

Case No.: 2:22-cv-00724-RFB-NJK

WHEREAS on February 18, 2022, Plaintiff Kimberly Bernard commenced Action No. 2:22-cv-00305-RFB-NJK (the “*Bernard* Action”) (*Bernard* ECF No. 1);

WHEREAS on April 4, 2022, Defendants Georges Antoun, Kevin DeNuccio, Sarita James, Jay Leupp, Merrick D. Okamoto, Said Ouissal, Simeon Salzman, and Fred Thiel, and Nominal Defendant Marathon Digital Holdings, Inc. (“Marathon”) moved to dismiss the *Bernard* Action (*Bernard* ECF No. 11);

WHEREAS on April 11, 2022, the parties agreed to a May 31, 2022 due date for plaintiff’s opposition, and on April 18, 2022, the Court so-ordered the schedule (*Bernard* ECF Nos. 18, 26);

WHEREAS on May 5, 2022, Plaintiff Roy Strassman commenced Action No. 2:22-cv-00724-RFB-NJK (the “*Strassman* Action”) (*Strassman* ECF No. 1);

WHEREAS on May 11, 2022, Defendants and Marathon moved to dismiss the *Strassman* Action (*Strassman* ECF No. 11);

WHEREAS on May 18, 2022, Plaintiffs’ counsel informed counsel for Defendants and Marathon that Plaintiffs intend to file a consolidated complaint;

WHEREAS on May 23, 2022, Plaintiffs filed motions to consolidate the *Bernard* and *Strassman* Actions, to appoint their counsel, Wolf Haldenstein Adler Freeman & Herz LLP

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 and Gainey McKenna & Egleston, as co-lead counsel for Plaintiffs, and to stay briefing on motions
2 to dismiss pending consolidation of the *Bernard* and *Strassman* Actions, as more specifically
3 stated in the motions and briefing on the motions (*Bernard* ECF Nos. 34–36; *Strassman* ECF Nos.
4 19–21);

5 WHEREAS on May 27, 2022, Defendants and Marathon filed their response to
6 Plaintiffs’ motions, stating their willingness to stipulate to consolidation and the requested lead
7 plaintiff designation and opposing an indefinite stay of briefing, as more specifically stated in
8 Defendants’ and Marathon’s papers (*Bernard* ECF Nos. 37–40; *Strassman* ECF Nos. 25–27);

9 WHEREAS on June 1, 2022, the Court entered an Order consolidating the *Bernard*
10 and *Strassman* Actions (*Bernard* ECF No. 41; *Strassman* ECF No. 29);

11 WHEREAS on June 3, 2022, Plaintiffs filed reply papers responding to
12 Defendants’ and Marathon’s response to Plaintiffs’ May 23, 2022 motions (*Bernard* ECF No. 42).

13 WHEREAS the parties have discussed scheduling in light of the procedural posture
14 of the action and the positions the parties have stated in their motion papers;

15 WHEREAS the parties have agreed to the following resolution of their disputes
16 concerning deadlines for filing a consolidated complaint and answers or motions to dismiss the
17 consolidated complaint;

18 WHEREAS this is the parties’ first request for relief resolving pending motions and
19 to set a schedule for proceedings in this action in light of the Court’s consolidation of these actions
20 on June 1, 2022;

21 WHEREAS this Stipulation is made in good faith, with good cause, and not for
22 purposes of unduly delaying discovery or trial;

23 IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned
24 counsel for the parties, subject to the approval of the Court, that:

- 25 1. All pending motions (*Bernard* ECF Nos. 11, 34–36; *Strassman* ECF Nos. 11, 19–20) are
26 withdrawn without prejudice.
- 27 2. The law firms Wolf Haldenstein Adler Freeman & Herz LLP and Gainey McKenna &
28 Egleston are designated co-lead counsel for Plaintiffs.

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

- 1 3. Plaintiffs are granted leave to file a consolidated complaint 30 days after an amended
- 2 complaint is filed in *Schlatre v. Marathon Digital Holdings, Inc.*, 2:21-cv-02209-RFB-NJK
- 3 (D. Nev.).
- 4 4. Answers or motions to dismiss are due 30 days after the consolidated complaint is filed.
- 5 5. If motions to dismiss are filed, opposition to the motions to dismiss is due 30 days after
- 6 they are filed.
- 7 6. If motions to dismiss are filed, replies are due 21 days after any opposition.

8 ///

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Dated this 10th day of June 2022.

MATTHEW L. SHARP, LTD.

By: /s/ Matthew L. Sharp

Matthew L. Sharp, Bar No. 4746
432 Ridge Street
Reno, Nevada 89501
Telephone: 775.324.1500
Email: matt@mattsharplaw.com

Thomas J. McKenna
Gregory M. Egleston
GAINEY McKENNA & EGLESTON
501 Fifth Avenue, 19th Floor
New York, New York 10017
Telephone: 212.983.1300
Facsimile: 212.983.0383
Email: tjmckenna@gme-law.com
Email: ggleston@gme-law.com

Attorneys for Plaintiff Kimberly Bernard

G. Mark Albright, Bar No. 1394
Daniel R. Ormsby, Bar No. 14595
ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT
801 S Rancho Dr., Ste D4
Las Vegas, Nevada 89106
Telephone: (702) 384-7111
Email: gma@albrightstoddard.com
Email: dormsby@albrightstoddard.com

Mark C. Rifkin
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Ave., 9th Fl
New York, New York 10016
Telephone: (212) 545-4600
Email: rifkin@whafh.com

Attorneys for Plaintiff Roy Strassman

Dated this 10th day of June 2022.

PISANELLI BICE PLLC

By: /s/ M. Magali Mercera

James J. Pisanelli, Bar No. 4027
Debra L. Spinelli, Bar No. 9695
M. Magali Mercera, Bar No. 11742
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Jonathan D. Polkes
(admitted pro hac vice)
Stephen A. Radin
(admitted pro hac vice)
Caroline Hickey Zalka
(admitted pro hac vice)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153

Attorneys for Defendants Georges Antoun,
Kevin DeNuccio, Sarita James, Jay Leupp,
Merrick D. Okamoto, Said Ouissal, Simeon
Salzman, and Fred Thiel, and Nominal
Defendant Marathon Digital Holdings, Inc.

ORDER

Having considered the Parties' Stipulation and finding good cause appearing,

IT IS SO ORDERED.


RICHARD E. BOULWARE, II
United States District Court

DATED: June 13, 2022.

Case No.: 2:22-cv-00305-RFB-NJK